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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Jason Lee Harris,

10 Petitioner,

11 v.

12 Charles L Ryan, et al.,

13 Respondents.  
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No. CV-19-05147-PHX-JJT

**ORDER**

15 At issue is the Report and Recommendation (Doc. 38) (“R&R”) submitted in this  
16 matter by United States Magistrate Judge Michelle H. Burns recommending the Court deny  
17 the Petition for Habeas Corpus as moot because Petitioner was released from custody and  
18 he did not challenge his underlying conviction (Doc. 1). Petitioner filed objections to the  
19 R&R (Doc. 39). Since the filing of the R&R, Petitioner has filed 13 largely unintelligible  
20 motions or supplements to his objections, including a Motion for Recusal of the  
21 undersigned. The Court will deny Petitioner’s Motion to Recuse, adopt the Report and  
22 Recommendation in full, deny Petitioner’s remaining motions, and dismiss this action.

23 **I. Recusal is Not Required**

24 Title 28, Section 455(a) of the United States Code provides that a United States  
25 judge “shall disqualify” himself in any proceeding in which his “impartiality might  
26 reasonably be questioned.” 28 U.S.C. § 455(a). Section 455(b)(1) provides that a judge  
27 must also disqualify himself where he “has a personal bias or prejudice concerning a party,  
28 or personal knowledge of disputed evidentiary facts concerning the proceeding[.]” *Id.*

§ 455(b)(1). Recusal pursuant to § 455(b) is required only if the bias or prejudice stems from an extra-judicial source, not from conduct or rulings during the course of the proceedings. *See Hasbrouck v. Texaco, Inc.*, 842 F.2d 1034, 1046 (9th Cir. 1987), *aff'd*, 496 U.S. 543 (1990). “[J]udicial rulings alone almost never constitute [a] valid basis for a bias or partiality motion.” *Liteky v. United States*, 114 S. Ct. 1147, 1157 (1994). Adverse rulings should be appealed; they do not form the basis for a recusal motion. Further, where the judge forms opinions in the courtroom, either in the current proceeding or in a prior proceeding, these opinions “do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.” *Id.*

Similarly, 28 U.S.C. § 144 provides for recusal where a party files a “timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party.” The affidavit must state the facts and reasons for the belief that the bias or prejudice exists. *Id.* If the judge finds the affidavit timely and legally sufficient, the judge must proceed no further, and another judge must be assigned to hear the motion. *Id.*; *United States v. Sibla*, 624 F.2d 864, 867 (9th Cir. 1980).

But Petitioner’s affidavit is not sufficient, there are no facts to support that the undersigned has any bias or prejudice, nor has Petitioner identified any extrajudicial matter from which an asserted bias arose. Accordingly, recusal pursuant to § 455(b) is not appropriate. *See, e.g., United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986) (judge’s prior adverse rulings are insufficient cause for recusal). Nor is recusal pursuant to § 144 appropriate. Accordingly, the undersigned will deny the motion to recuse.

## **II. Report and Recommendation**

The Court adopts in whole the R&R and agrees with the conclusion that this petition is moot. It is a jurisdictional requirement that a habeas corpus petitioner be “‘in custody’ under the conviction or sentence under attack at the time his petition is filed.” *Maleng v. Cook*, 490 U.S. 488, 490-91 (1989) (citing 28 U.S.C. §§ 2241(c)(3) & 2254(a); *Carafas v.*

1 *LaVallee*, 391 U.S. 234, 238 (1968)). “[The Supreme Court has] never held  
 2 . . . that a habeas petitioner may be ‘in custody’ under a conviction when the sentence  
 3 imposed for that conviction has *fully expired* at the time his petition is filed.” *Maleng*, 490  
 4 U.S. at 491 (emphasis in original). Once a petitioner has completed the sentence imposed  
 5 for a conviction, “the collateral consequences of that conviction are not themselves  
 6 sufficient to render an individual ‘in custody’ for the purposes of a habeas attack upon it.”  
 7 *Id.* at 492. Thus, while, “custody” is not limited to actual physical incarceration, *see Jones*  
 8 *v. Cunningham*, 371 U.S. 236, 239 (1963), one condition of being “in custody” is that the  
 9 petitioner be subject to restraints not shared by the public generally, *see id.* at 243 (parolee  
 10 is “in custody” within the meaning of the habeas statute).

11 Further, the “case-or-controversy” requirement of article III, § 2, of the United  
 12 States Constitution requires a habeas corpus petitioner to have a “personal stake in the  
 13 outcome of the lawsuit.” *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (quoting *Lewis v. Cont’l*  
 14 *Bank Corp.*, 494 U.S. 472, 477-78 (1990)). So even where a petitioner satisfies the “in  
 15 custody” requirement at the time the petition is filed, it may become moot if he is released  
 16 from custody prior to any ruling. *Id.* Once a sentence has expired, “some concrete and  
 17 continuing injury other than the now-ended incarceration (or parole)— some ‘collateral  
 18 consequence’ of the conviction—must exist if the suit is to be maintained.” *Spencer*, 523  
 19 U.S. at 7 (holding that potential impact of conviction on future sentencing proceeding was  
 20 not a sufficient injury to demonstrate article III standing).

21 Nothing in any of Petitioner’s objections, supplemental objections, or motions for  
 22 an evidentiary hearing establish that there is an ongoing case or controversy with respect  
 23 to his habeas corpus petition. He received the relief he sought—release from custody—and  
 24 did not challenge the propriety of his underlying conviction or allege he is subject to any  
 25 ongoing collateral consequence.<sup>1</sup> Although not clear, to the extent that Petitioner is  
 26 attempting to present a claim of false imprisonment under state law, Respondent notes that  
 27 Petitioner has an ongoing tort action in Maricopa County Superior Court (Doc. 33). Thus,  
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<sup>1</sup> Petitioner has returned to custody in connection with a separate criminal matter.

1 the Court will adopt the R&R, deny the Petition as moot, and deny Petitioner's remaining  
2 motions.

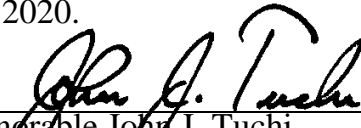
3 **IT IS THEREFORE ORDERED** that Petitioner's Motion to Recuse (Doc. 48) is  
4 **denied**.

5 **IT IS FURTHER ORDERED** adopting in whole Magistrate Judge Burns' R&R  
6 (Doc. 38) and dismissing and denying as moot the Petition for Writ of Habeas Corpus  
7 pursuant to 28 U.S.C. 2254 (Doc. 1). All remaining motions (Docs. 41, 45, 47, 50, 51, 53,  
8 54, 55, 56) are **denied**.

9 **IT IS FURTHER ORDERED** denying a Certificate of Appealability and leave to  
10 proceed in forma pauperis. Dismissal of the Petition is justified by a lack of jurisdiction  
11 and reasonable jurists would not find the ruling here debatable.

12 **IT IS FURTHER ORDERED** directing the Clerk of the Court to enter judgment  
13 accordingly and close this matter.

14 Dated this 18th day of September, 2020.

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17 Honorable John J. Tuchi  
18 United States District Judge  
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